Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band	)	IB Docket No. 99-67

COMMENTS OF ONSTAR CORPORATION

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Summary

The Further Notice of Proposed Rulemaking asks what, if anything, should be required of telematics services in the way of 911 regulations. OnStar's answer is that the Commission's public interest objectives are being and will continue to be met without regulation. Left unregulated, telematics has been a tremendous success, providing rapid, reliable, and increasingly affordable safety and security service to millions of consumers nationwide. The accuracy of the position location service that OnStar provides today exceeds the requirements of the FCC's rules for enhanced 911 service and surpasses anything that is available from the commercial wireless industry.

In most respects OnStar's services are fully consistent with the Commission's rules for the provision of basic and enhanced 911 by Commercial Mobile Radio Service providers. Nonetheless, the imposition of a few of the rules the Commission has developed for CMRS providers, specifically related to activation of Phase II compliant handsets, unless they were modified appropriately to account for the special characteristics of telematics, would be counterproductive. The development and deployment of telematics equipment and services is more complicated than the provision of cellular or PCS service. There is a longer lead time required to develop telematics equipment that must be customized for various manufacturers and vehicle models and tested and validated with many different wireless operators. Moreover, because it is integrated into the vehicle, telematics equipment once deployed remains in use for ten or more years, during which time as a practical matter it cannot be modified. Unless the Commission's rules took account of these differences, their application to telematics would either preclude OnStar from continuing to offer certain services or impose enormous costs, and in any case would require many years to implement—all without any real benefit.

The Commission should not regulate telematics on the basis of a theory that telematics providers are CMRS providers or that the 911 Act mandates such regulation. Moreover, expanding the rules to include telematics would be inconsistent with years of Commission policy not to regulate what are clearly enhanced or information services.

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COMMENTS OF ONSTAR CORPORATION

OnStar Corporation submits the following comments in response to the Commission's Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-captioned docket.[1] OnStar urges the Commission to refrain from imposing 911 regulations on telematics providers. Without regulation, telematics is providing superior safety and security service. Moreover, unless the existing 911 rules were modified appropriately, their application to telematics would cause serious disruption to the provision of service.

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[1] In the Matter of Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Further Notice of Proposed Rule Making, CC Docket No. 94-102, FCC 02-326 (released December 20, 2002). Consistent with the Commission's Public Notice released February 19, 2003, these comments are timely filed in light of the closure of the federal government on February 18, 2003, due to inclement weather.

Background

OnStar. OnStar is a leader in the telematics industry, with over two million subscribers that rely on its service for added safety and security. In addition to providing service, OnStar also develops call flows, network interactions and engineering specifications for telematics equipment, and conducts validation and type certification for the telematics hardware and software employed in nearly 60 models of vehicles built around the world by six different automobile manufacturers. Generally, each vehicle model presents unique engineering issues for OnStar and its automotive manufacturing partners.[2] Since its introduction in late 1996, OnStar has progressed from a luxury item available solely in high-end vehicles, to an option available on value-priced vehicles, such as the Chevrolet Cavalier. OnStar's first five generations of system designs rely on analog wireless technology. Beginning with the 2004 model year, General Motors anticipates that it will begin to phase-in digital telematics equipment on selected vehicles. OnStar's other automotive partners are also planning to begin phasing–in digital telematics systems. Before a new generation system can be deployed, OnStar and its wireless partners, its automotive partners and their suppliers must conduct extensive validation testing of its connectivity and interaction with the networks of the various wireless partners across the country and with OnStar's call centers; its compatibility with the electrical architecture of each of an automotive manufacturer's affected models; its RF performance and the operation of the hands-free voice recognition system with the vehicle's interior acoustics environment. The latter two

[2] OnStar provides telematics to General Motors (Chevrolet, Pontiac, Oldsmobile, Buick, Cadillac, GMC, Saturn, Hummer and SAAB) as well as Acura (manufactured by Honda), Audi (manufactured by Volkswagen), Isuzu, and Subaru. Volkswagen has announced selected future product programs will offer OnStar beginning in late 2003. OnStar is also the underlying service provider for Toyota's Lexus Link system offered on selected Lexus models.

are also unique to each vehicle. Telematics equipment is integrated with and built into the vehicle at the time it is manufactured, so the equipment is built to last as long as the vehicle.

OnStar has a long-standing relationship with public safety entities and associations. It is a member of the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Emergency Number Association ("NENA"), and is active in efforts by these and other organizations to improve the technology and operational procedures for delivering emergency information to PSAPs and other public safety agencies. Correspondingly, OnStar is continuing to work with public safety organizations to develop its telematics service to ensure that OnStar provides its subscribers with cutting-edge technology and the highest level of protection.

OnStar Technology. Integrated into a vehicle's electrical architecture including various onboard computing systems, OnStar telematics combine vehicle computer sensing and diagnostic systems, information storage, autonomous GPS, voice recognition technology, and wireless data and voice communications to create a system that is able to provide features and services that are interactive with the vehicle's operation and its occupants. The OnStar equipment is not portable; there is no "handset" that can be removed from the vehicle. Antennas for wireless service and Global Positioning System ("GPS") service are permanently mounted in the vehicle body. The vehicle's alternator and automotive battery provide power. A microphone is attached to the headliner of the vehicle's interior near the driver or integrated into the rear view mirror, and the system is connected to the vehicle's audio system, the normal operation of which is overridden when OnStar is in use. A three-button keypad is integrated into either the headliner of the vehicle, the rear view mirror, or the vehicle's instrument panel. OnStar employs a hands-free, voice recognition design to minimize driver distraction.

The OnStar telematics system accesses the vehicle's various computer systems and the GPS receiver to continually collect, process, and store information about the vehicle's position and operation. OnStar maintains agreements with wireless providers nationwide to support its telematics services, which are currently delivered from one of three call centers. When a call is initiated to an OnStar call center, the OnStar telematics system can provide information about the location, diagnostics, and status of a vehicle, as well as connect the vehicle occupants to the OnStar call center for any assistance that may be required.

OnStar Service. The cornerstone of OnStar's telematics service is the gathering and processing of location, vehicle and, in the future, occupant information to provide location-based safety and security services using trained OnStar customer advisors at its three call centers. OnStar subscribers enter into a contractual agreement with OnStar for the provision of services that include automatic crash notification, emergency services, roadside assistance, remote diagnostics, stolen vehicle location, and remote door unlock. Communications with the call center are initiated either automatically if the vehicle is involved in a crash resulting in an airbag deployment, referred to as Automatic Crash Notification ("ACN"), or by the driver pressing one of two buttons on the keypad, one of which is for emergencies and the other for non-emergencies.

Each communication to the OnStar center, regardless of whether it is triggered automatically or initiated by the driver, begins with a data transmission of information stored by the vehicle identifying the vehicle, the priority of the call (i.e., crash notification, emergency, or routine), and the precise geographic coordinates of the vehicle's location (using highly-accurate autonomous GPS); the call then switches seamlessly to voice transmission, permitting the OnStar customer advisor to talk to the vehicle's occupants. OnStar is an "opt-in" service. A separate

subscriber agreement is required and the first year of service is included in the price of the vehicle or any option package that includes OnStar. The OnStar agreement provides for customer consent to OnStar's delivery of private information to a PSAP or a third-party in the event of an emergency.

Emergency communications are identified automatically by the OnStar call center and given priority in the queue of incoming communications. The call is routed to a section of designated emergency advisors within the call center; however, all OnStar advisors are trained to handle emergency calls. OnStar maintains an average speed to answer for emergency calls of less than 5 seconds. Based on the GPS location data provided by the vehicle's telematics system, the OnStar advisor immediately upon confirming the existence of an emergency contacts the appropriate Public Safety Answering Point ("PSAP"). OnStar maintains a database that it updates continually of phone numbers and geographic boundaries for PSAPs nationwide. The verbal report by OnStar's call center personnel to the PSAP includes identification of OnStar as the caller; the nature of the incident; the location of the emergency; and an offer to conference the PSAP with the vehicle. The OnStar advisor provides the PSAP with the OnStar center's call back information. If necessary, the OnStar advisor can initiate contact with the vehicle and put the PSAP back in contact with the occupants. The OnStar advisor also offers to the occupants to stay on the call until public safety arrives.

In rare cases, an OnStar subscriber who has purchased the additional wireless calling plan may chose not to use OnStar's call center services but instead call 911 directly from the vehicle.[3]

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[3] OnStar's interconnected wireless calling service uses the same embedded equipment that is used for OnStar's call center services, and is available only to those who subscribe to OnStar's basic call center services. On a voluntary basis, OnStar has designed and deployed the wireless calling service to comply fully with the Commission's Phase I requirements for 911 and OnStar is in the process of developing a new set of Phase II-

This approach requires the subscriber to push the third-button on the keypad (used for interconnected wireless calling), wait for the system to say "Ready," then instruct the system to initiate a call by saying "Dial," wait for the system to respond, then dictate the number, in this case "9-1-1," and then instruct the system to execute the call by saying "Dial," after which the system initiates the call. OnStar billing records show that use of 911 is quite rare compared to the use of OnStar's call centers.

On average, OnStar forwards approximately 6,000 emergency communications from its subscribers to PSAPs each month. As with traditional 911 calls, not every emergency call to OnStar actually requires the response of public safety personnel. OnStar advisors are able to filter out inadvertent or non-emergency calls that do not require emergency assistance, thereby alleviating the problem of unnecessary calls to PSAPs.

Future OnStar Technology and Services. OnStar and its automotive manufacturing partners are continually exploring new approaches to providing location and other relevant information to PSAPs and other public safety participants including traffic management, first responders, secondary PSAPs, and hospital emergency rooms. Working with the ACN Subcommittee of NENA's Nontraditional Access Committee, OnStar is actively involved in the process of reviewing these possibilities.

OnStar's current system operates on analog wireless networks. OnStar, its wireless carrier partners, its automotive partners and their suppliers are actively working to engineer and implement a transition to digital operations. OnStar and its partners are also continuing work towards a fully compliant Phase II solution for its interconnected wireless calling service.

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compliant specifications. Following the necessary validation and testing with automotive manufacturers and wireless providers, OnStar expects that it will be able to begin implementing the Phase II-compliant service on at least selected OnStar-equipped models in 2006.

OnStar expects to be able to begin the phase-in such of a solution beginning no later than 2006. The need to coordinate with many different manufacturers and wireless network operators makes the development of a reliable solution an unusually complex and time-consuming undertaking.

Onstar's Petition. OnStar recently asked the Commission to clarify that telematics equipment is not a "handset" for purposes of the requirements for Phase II compliance. OnStar Petition (December 3, 2002); Public Notice DA 02-3565 (December 20, 2002). OnStar was prompted to file this petition by its concern that indiscriminate application of existing rules to OnStar's telematics units (rules heretofore applied only to equipment and services offered directly by cellular and PCS licensees) was threatening the stability of the telematics industry and its relations with automotive manufacturers and wireless providers at a particularly sensitive time, as the industry is making an expensive and complicated transition to digital networks. OnStar's Petition focused particularly on the importance of excluding telematics equipment from the E911 Phase II handset activation requirements under Section 20.18(g). As OnStar described in its Petition, because of the significant technical risks of trying to launch digital telematics and simultaneously implement autonomous GPS based Phase II calling across multiple carrier networks, OnStar needs more time to develop and validate the compatibility of compliant equipment. The relief requested by OnStar's Petition also focuses on the greater longevity of telematics equipment compared to typical wireless handsets. Telematics equipment lasts as long as the vehicle, typically more than ten years; in contrast, handsets are replaced every couple of years. Based on this more rapid turnover, the Commission's rules require 95% of a carrier's customers to be using Phase II compliant equipment by December 31, 2005. If this requirement applied to telematics equipment it would unfairly penalize either telematics providers or carriers providing service to telematics providers. While there is overlap between OnStar's Petition and

this rulemaking, OnStar urges the Commission to act promptly on its Petition in order not to jeopardize the deployment of OnStar's digital services, scheduled for fall 2003.

Further Notice of Proposed Rule Making. In its *FNPRM*, the Commission seeks input regarding the possible extension of its 911 regulations to entities other than the Commercial Mobile Radio Service ("CMRS") licensees. *FNPRM* at ¶¶ 11-15; see also 47 C.F.R. § 20.18. Specifically, the Commission solicits comment on "what, if anything, should be required of telematics services," and what expectations telematics subscribers have with regard to 911 service. *FNPRM* at ¶64. The *FNPRM* notes that given the nature of telematics services, that perhaps provision of emergency services through a call center is an acceptable, and even beneficial, method of relay information to the appropriate PSAP. *FNPRM* at ¶65-67. Further, the Commission requests comment on the relationship between telematics providers, PSAPs, emergency service providers, and state and local agencies, and any plans for system integration between PSAPs and telematics providers. *FNPRM* at ¶64-75. In addition, the *FNPRM* asks for comment on the Commission's legal authority to extend its 911 regulations to telematics providers, suggesting two grounds for such an extension: the Communications Act, Section 332 and the Wireless Communications and Public Safety Act of 1999 (the "911 Act"). *FNPRM* at ¶¶76-80, 96-97.

Discussion

I. Telematics is Providing Valuable Safety and Security Services Without Regulation

OnStar already serves the public interest goal of providing improved safety and security to the public, without regulation. Indeed, telematics is the only wireless service that is currently delivering nationwide precise GPS-based location information with every emergency call regardless of a PSAP's readiness for Phase II calling.

Relay of Emergency Calls Through the OnStar Center is Beneficial. As the Commission acknowledged in its *FNPRM*, the use of call centers can be beneficial and information provided by the call center can "aid in determining the appropriate response and emergency services provider to be deployed, based on the circumstances of each incident." *FNPRM* at ¶ 67. In OnStar's case, through the use of autonomous GPS, it is able to provide more accurate location information than could be provided using Phase II compliant approaches to supplying location information. *FNPRM* at ¶¶ 65-67. Emergency communications are given priority in the OnStar system and the call center advisors are trained to coordinate between the subscriber and the appropriate PSAP. Accordingly, emergency communications are relayed to the appropriate PSAP in a fast and efficient manner, and result in an emergency response that is better informed about the location, type, and severity of the emergency that is involved. It is notable that compared to "good Samaritan" wireless calls, the telematics call is with the vehicle occupants and therefore offers better information to public safety.

The OnStar call center provides a valuable service by filtering calls to the PSAP. OnStar advisors currently receive several thousand emergency calls a day of which only a fraction are appropriate to forward to public safety. The remaining calls are often of a non-emergency nature, inadvertent calls, or simply tests of the emergency system. By screening these calls, OnStar relieves PSAPs across the country from having to deal with a substantial number of calls that do not require an emergency response. Importantly, because telematics' ACN calls do not require occupant intervention, the telematics call center can provide public safety notice of a crash with the precise location and vehicle information even if the occupants are not conscious.

Routing Emergency Calls to PSAPs. OnStar maintains a database of phone numbers and geographic boundaries for PSAPs nationwide, which is updated continuously to ensure the most

accurate information possible, and to ensure that it is able to reach all PSAPs in the country. Based on the geographic position calculated by the subscriber's telematics system and transmitted to the call center, the OnStar advisor immediately contacts the geographically appropriate PSAP. OnStar is not aware of any problems with its current procedure that would require the Commission's intervention in this area.

Delivery of Call Back Numbers. The *FNPRM* suggests that the relay of emergency communications by the OnStar center to the PSAP may result in a failure to pass a callback number on to the PSAP. *FNRPM* at ¶ 69. As detailed above, when contacting a PSAP, the OnStar advisor provides the OnStar center's call back information. In the event that the communications to the vehicle is lost the OnStar advisor can initiate contact with the vehicle. It is important to note that only the OnStar call center can call back all vehicles. In the rare case in which an OnStar customer uses wireless calling to contact a PSAP directly, because the service is Phase I-compliant, the PSAP will receive the Automatic Number Information needed to call back, assuming the customer has available prepaid minutes.

Consumers' Expectations of 911 Service. The *FNPRM* requests information regarding the expectations that telematics subscribers may have regarding their ability to reach 911 directly. *FNPRM* at ¶ 70. OnStar believes that its customers have a clear sense that emergency calls, initiated either automatically after a crash or by the occupants, are transmitted to the OnStar call center and not directly to a PSAP. Indeed, in all OnStar emergency-calling implementations, the system says "Calling OnStar Emergency Services." The fundamental premise of OnStar's service is the ability to communicate with the OnStar call center; virtually all of the telematics' features focus on this interaction with the call center. Accordingly, OnStar

does not believe that its subscribers have any expectation that, when they contact an OnStar call center, they are communicating directly with a PSAP.

There is no evidence that any additional notice or instruction is necessary to inform consumers about the differences between a call directly to a PSAP and a call to an OnStar call center. It has been OnStar's experience that its customers recognize that emergency communications via the OnStar system rely on the OnStar call center providing the necessary information to, and as appropriate conferencing the call with, the geographically appropriate PSAP.

OnStar's Wireless Calling Service Voluntarily Meets Phase I Requirements. Customers of OnStar's interconnected wireless calling plan receive service that is consistent with the Commission's rules for Phase I 911 service, including the ability to use unsubscribed equipment to call 911. 47 C.F.R. § 20.18(b). As mentioned above, OnStar is in the process of developing a new set of specifications that comply with Phase II calling requirements. Following the necessary validation and testing with manufacturers and wireless providers, OnStar expects that it will be able to begin implementing the Phase II-compliant service on at least selected OnStar-equipped models no later than 2006.

OnStar Cooperates Successfully with PSAPs, Public Safety, and Industry. The Commission's *FNPRM* requests comment on the relationship between telematics providers and PSAPs, emergency service providers, and state and local agencies. OnStar believes that it maintains good relationships with all of these various segments of the public safety arena. OnStar is a long-standing and active member of APCO and NENA, and has been and remains a leader in coordinating efforts among public safety entities, equipment manufacturers, PSAPs, and wireless carriers.

AACN. OnStar strongly supports the development of advanced automatic crash notification as an important way to improve dispatch decisions and provide first responders and hospitals with previously unavailable information. In these advanced systems, information will be relayed regarding the severity of the crash and the direction of impact as well as information about the number of passengers and the use of safety belts to the extent that vehicle sensors monitor them. Additionally, automatic calls will be initiated for a wider variety of vehicle incidents than airbag deployments. The development of this capability has been a goal of the National Highway Traffic Safety Administration and the U.S. Department of Transportation. As discussed in the *FNPRM*, General Motors later this year will become the first automotive company to begin providing AACN in selected OnStar-equipped models. *FNPRM* at ¶ 68.

AACN is very much in its infancy, however, and OnStar believes it is premature for the Commission to initiate any regulatory requirements around this emerging, innovative technology. It is critical to recognize that the situation around AACN data is very fluid. OnStar has been in discussions with a number of public safety interests to explain what data is expected to be available in General Motors' first generation implementation and to learn what and how to present the data to public safety.

OnStar has also urged public safety to think about how it will use the data from AACN to make more informed dispatch decisions, better prepare for receiving crash victims, and manage the associated traffic situation. OnStar and the other participants in the telematics industry are very committed to standardizing the manner in which this information will be communicated to PSAPs and other public safety agencies. For example, OnStar has been an active participant of the ComCARE initiative to develop a standardized data format that can be used to post the information to a secure website that would be accessed by appropriate public safety agencies.

This proposed standard is now out for review and comment. OnStar is currently involved with tests and demonstration projects in the State of Minnesota and Northern Shenandoah Valley, Virginia, regarding the transmittal of AACN data to PSAPs and other public safety agencies.

II. Regulation Could Lead to the Imposition of Unnecessary and Burdensome Requirements

The imposition of 911 regulations on telematics, either the rules developed for CMRS providers contained in Section 20.18 or new rules designed for telematics, could impose substantial unnecessary costs that will slow the deployment of services that are already saving lives. Telematics is a highly price-sensitive business, so the addition of any unnecessary costs can have a major impact on its marketability and therefore the availability of this precise location-based emergency information to public safety.

While the *FNPRM* does not suggest what if any 911 regulations the Commission would consider applying to telematics providers, the imposition of at least certain of the obligations could present a significant hurdle for the telematics industry. Given the complexity of developing equipment simultaneously for six different automobile manufacturers, any requirement to redesign OnStar's telematics equipment would be enormous. Similarly, given the long lead times for developing new equipment and the greater than ten year life-cycle of equipment that is integrated into an automobile, it would take a significant amount of time for a new generation of equipment to be introduced. As pointed out by the *FNPRM*, the life cycle of the equipment is a major issue for telematics and any regulations would have to take these factors into account. *FNPRM* at ¶ 72. The Commission specifically seeks comment about the imposition of an "all-calls" rule on telematics services. *FNPRM* at ¶ 73;47 C.F.R. § 20.18(b). OnStar is complying voluntarily with this rule with respect to the use of its equipment for interconnected wireless service, but it strongly opposes any requirement that would permit a

former subscriber or the new owner of a vehicle to be able to use OnStar's call center services without a current subscription. Such a requirement would cut to the core of OnStar's business, raise serious privacy issues, and expose OnStar to liability to parties with which it has no contractual relationship.

If the Commission were to extend indiscriminately to any of OnStar's telematics services the existing 911 regulations in Section 20.18 that are applicable to CMRS, including particularly the activation requirements of Section 20.18(g) that are the subject of OnStar's Petition, OnStar and other telematics providers would be prevented from providing wireless service until compliant equipment and network solutions could be developed and implemented. OnStar's telematics system was developed around the use of autonomous GPS, whereas compliance with the Phase II ALI requirements by CMRS providers has developed around assisted GPS and AFLT. OnStar's services are being transitioned from multi-network analog services to multi-network CDMA digital services. These digital networks currently are or will be supporting Assisted GPS/AFLT E911 Phase II calling solutions. The reconciliation of these different approaches is proving complex and time-consuming. The engineering and validation task is more complicated than it is for CMRS providers, since while they only have to engineer a solution for their own network, OnStar as a nationwide operator must work with multiple carriers in order to achieve a cross-network solution.

Moreover, even after technical solutions are developed and implemented, OnStar's telematics legacy equipment will remain for years embedded in subscribers' vehicles. Retrofitting all such vehicles is practically impossible and, in any event, would be prohibitively expensive. As described above, OnStar's telematics equipment is integrated throughout a vehicle's electrical architecture. With rare exceptions, any effort to retrofit embedded equipment

is as a practical matter impossible. Any 911 requirements that may be imposed on OnStar's telematics or related services therefore should be only prospective and apply only to new equipment.

III. The FCC Has Failed to Articulate a Sufficient Legal Basis for the Extension of Its 911 Regulations to Telematics

Section 332 Commercial Mobile Services. The *FNPRM* suggests that Section 332 of the Communications Act of 1934, as amended, gives the Commission the authority to regulate telematics as providers of "Commercial Mobile Radio Service." OnStar's telematics service, however, does not meet the definition of Commercial Mobile Radio Service and should not be treated as a common carrier under Title II of the Act. OnStar's call center offerings, the cornerstone of its service, are not CMRS, as they lack the critical element of interconnection to the public telephone network.

Section 332 gives the Commission authority to regulate providers of "Commercial Mobile Radio Service" as common carriers. 47 U.S.C. § 332; 47 U.S.C. § 201(b). The test of whether a radio service is to be treated as a common carrier is whether the mobile service "is provided for profit and makes interconnected service available (A) to the public or (B) to such class of eligible users as to be effectively available to a substantial portion of the public." 47 U.S.C. § 332(d)(1). "Interconnected service" is defined in the FCC's rules as a service "that is interconnected with the public switched network that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network." 47 C.F.R. § 20.3. While OnStar's telematics system uses a wireless carrier's network to relay communications from a subscriber's vehicle to the OnStar call center, this communication is not interconnected to the public switched network and does not give the subscriber the ability to send and receive calls to all other users on the PSTN. Rather, the telematics system can only

communicate with the OnStar call center. Thus, the *FNPRM* fails to suggest a proper jurisdictional basis for the Commission's regulation of telematics.

While the optional interconnected wireless calling service is arguably CMRS, it should be viewed as incidental to OnStar's more fundamental telematics service. It is available only as an add-on to the call center services, is limited to the use of that equipment, and is far less likely to be used by OnStar customers to contact PSAPs than are the OnStar call center services that nationwide provide all PSAPs with highly-precise location information. Moreover, OnStar today either voluntarily complies with all of the Commission's 911 rules in its provision of interconnected wireless service or is in the process of developing the modifications necessary to comply and expects those modifications to be available and to be phased in beginning in the next few years.

911 Act. The *FNPRM* also suggests that the 911 Act potentially provides the Commission with a basis for extending its jurisdiction to telematics providers. However, while the 911 Act states broad goals for implementation of 911, it does not give the FCC any clear new authority to expand its jurisdiction and, in fact, seems to expressly preclude the FCC from using the statute to impose any new burdens. Instead, the 911 Act establishes "9-1-1" as the universal emergency telephone number within the United States, extends 911 liability protection to wireless services, and amends the privacy obligations imposed on telecommunications carriers.[4] The 911 Act broadly instructs the Commission to "encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless

[4] Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (codified at 47 C.F.R. §§ 222 and 251(e)); *see also*, S. Rep. No. 106-138 (1999); H.R. Rep No. 106-25 (1999).

telecommunications networks and enhanced 9-1-1 service." 47 U.S.C. § 615. That same provision of the Act, however, states, "nothing in [this section] shall be construed to authorize or require the Commission to impose obligations or costs on any person." *Id.*

The FCC's Historical Exercise of Jurisdiction. The FCC has generally refrained from extending its regulations to "value-added" or "enhanced service" providers, more recently referred to as "information service" providers.[5] OnStar is a classic information service provider inasmuch as it buys wireless and wireline services and bundles them with additional services that it provides, including specific information about the customer and the area in which the customer is located. OnStar's embedded telematics system obtains and stores information that, with the help of OnStar's operators, is processed and made accessible to customers and PSAPs.

Historically, the Commission has been reluctant to regulate information service providers.[6] For the Commission to extend to the providers of information services the same

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[5] "Enhanced service" or "value-added service" is defined as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702; *see also*, *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry),* 77 FCC 2d 384, 420 (1980). The term "information service" is defined by the Communications Act as "the offering of a capability of generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications…." 47 U.S.C. §153(20).

[6] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (1980) ("Computer II Order") *recon*., 84 FCC 2d 50 (1980), *further recon*., 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 939 (1983) (finding that regulation of enhanced services provided by telecommunications providers is not required and that the absence of traditional regulation of enhanced services was more beneficial); *see also Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) (Internet access providers are an information service and, as such, are not required to contribute to universal service mechanisms); *Bell Operating Companies, Joint Petition for Waiver of*

obligations currently applicable to telecommunications service providers would constitute a fundamental change in the Commission's rules and policies. Thus, even if the FCC were to find that it had the legal authority to regulate OnStar's telematics services, it would be a radical departure from its traditional exercise of jurisdiction for it to do so.

The Commission also may choose to forebear from applying 911 requirements on any or all telematics services. The Telecommunications Act of 1996 specifically authorizes the Commission to "forbear from applying any regulation of any provision of this Act to a telecommunications carrier or telecommunications service" if it determines that: (i) "enforcement of such regulation is not necessary to ensure that charges, practices, classifications, or regulations . . . are just and reasonable and are not unjustly or unreasonably discriminatory," (ii) enforcement "is not necessary for the protection of consumers," and (iii) forbearance is "consistent with the public interest." 47 U.S.C. § 160(a). [7] Here, it is evident that OnStar is meeting its public interest obligations and providing a valuable service without any direct regulation by the Commission.[8]

Computer II Rules, 10 FCC Rcd 13758 (CCB 1995) (enhanced services, including voicemail, protocol processing, electronic information services—including gateway, on-line database, and Internet access services—enhanced facsimile services, and voice information services are not subject to structural separation requirements).

7 *See also RegioNet Wireless License, LLC (Petition for Forbearance From Enforcement of Section 80.102 of the Commission's Rules)*, 15 FCC Rcd 16119 (2000) (finding forbearance appropriate in exempting Automated Maritime Telecommunications Systems from station identification requirements).

8 *See also Comments of Cellular Telecommunications & Internet Association*, CC Docket No. 94-120, submitted January 24, 2003 at p. 4.

Conclusion

Therefore, for the above-stated reasons, OnStar Corporation urges the Commission not to impose any of its 911 service regulations on the kinds of telematics services offered by OnStar.

Respectfully submitted,

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